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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMARCO CHRISTOPHER BELL,

Defendant and Appellant.

G051301

(Super. Ct. No. 13CF2361)

O P I N I O N

Appeal from an order of the Superior Court of Orange County,
Christopher Evans, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for
Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and
James H. Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

Defendant Demarco Christopher Bell appeals from an order granting his petition for resentencing under Proposition 47. Bell had pleaded guilty to one felony count of possessing methamphetamine and was sentenced to a one-year prison term. Although he approves of the trial court's reduction of his felony conviction to a misdemeanor, Bell contends the court erred by ordering him to serve one year on parole. Bell argues he had already completed his sentence within the meaning of Penal Code section 1170.18, subdivision (f). (All further statutory references are to the Penal Code unless otherwise specified.) We affirm the court's order imposing parole.

BACKGROUND

In August 2013, Bell was charged in an information with one count of possession of a controlled substance (methamphetamine), in violation of Health and Safety Code section 11377, subdivision (a), and one count of destroying or concealing evidence, in violation of section 135. The information also alleged Bell was previously convicted of a serious and violent felony (attempted kidnapping in violation of sections 664 and 207, subdivision (a)), for which he served a prison term within the meaning of section 667.5, subdivision (b). The trial court granted the prosecution's motion to dismiss the destroying or concealing evidence count of the information.

Bell pleaded guilty to the possession of methamphetamine offense and admitted the prior conviction and prison term enhancement allegations, asserting the following factual basis in support of his plea: "7/21/13 I willfully and unlawfully possessed a us[able] amount of methamphetamine a controlled substance and I admit I suffered the convictions alleged in the information." The trial court accepted Bell's plea.

For purposes of sentencing, the trial court struck the prior serious and violent felony conviction enhancement for the following reasons set forth in the court's minute order: "The nature of the current offense is less serious than other felonies; The current offense is not a violent or serious felony; The facts and circumstances of the current offense do not indicate a greater degree of danger to society; There was no injury or threat of injury to any person; There was no weapon used in the current offense; The amount of drugs was small, 2.67 grams." (Boldface omitted.) Also, for purposes of sentencing, the court struck the section 667.5, subdivision (b) prior prison term enhancement. The court sentenced Bell to the low prison term of 16 months and awarded him credit in the total amount of 92 days.

In January 2015, Bell filed an application under section 1170.18, seeking to have his felony conviction designated as a misdemeanor. Bell's application stated in part: "Defendant has completed his sentence. Pursuant to Penal Code §1170.18, subdivision (f), Defendant, by and through counsel, petitions this court to recall the felony convictions listed above and reduce those convictions to misdemeanors. [¶] In the alternative, pursuant to Penal Code §1170.18, subdivision (a), Defendant, by and through counsel, petitions this court to recall the felony convictions listed above, reduce those convictions to misdemeanors, and set the matter for resentencing."

The court granted Bell's application and ordered his conviction for possession of a controlled substance designated a misdemeanor pursuant to section 1170.18. The court ordered Bell's prison sentence recalled, resentenced Bell to 365 days in the Orange County jail, and credited him with a total of 365 days, which reflected the 183 days that Bell had served in actual custody and the 182 days he had accrued in conduct credit. The court also ordered Bell to be placed on one year of parole pursuant to section 1170.18, subdivision (d). Bell appealed.

DISCUSSION

Bell contends the trial court erred by ordering him to serve a one-year parole period. He argues that because he had completed his prison term, he came within section 1170.18, subdivision (f), which does not authorize the imposition of a one-year parole period. Bell's contention is without merit because he had not completed his "sentence" within the meaning of section 1170.18, subdivision (f), and, thus, he was properly resentenced and placed on parole under section 1170.18, subdivisions (a), (b), and (d).

In 2014, the voters enacted Proposition 47, which makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1089, 1091.) Those offenses previously had been designated either as felonies or as crimes that can be punished as either felonies or misdemeanors. (*Id.* at p. 1091.)

Proposition 47 added, among other things, section 1170.18 to the Penal Code. (*People v. Rivera, supra*, 233 Cal.App.4th at p. 1092.) Section 1170.18 is a resentencing provision that provides two distinct remedies depending on whether the person seeking relief has completed the sentence for the conviction. (*People v. Rivera, supra*, at pp. 1092-1093.) When the person is currently serving the sentence, section 1170.18, subdivision (a) governs, which states: "A person currently serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section ('this act') had this act been in effect at the time of the offense may petition for a recall of sentence before the trial court that entered the judgment of conviction in his or her case to request resentencing in accordance with Sections 11350, 11357, or 11377 of the Health and Safety Code, or Section 459.5, 473, 476a, 490.2, 496, or 666 of the Penal Code, as those

sections have been amended or added by this act.” (§ 1170.18, subd. (a); *People v. Rivera, supra*, at p. 1092.)

When the person has completed the sentence, section 1170.18, subdivision (f) governs, which states: “A person who has completed his or her sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under this act had this act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in his or her case to have the felony conviction or convictions designated as misdemeanors.” (§ 1170.18, subd. (f); *People v. Rivera, supra*, 233 Cal.App.4th at p. 1093.)

If the trial court determines the criteria for relief under section 1170.18, subdivision (a) are satisfied, then the felony sentence is recalled and the person is resentenced to a misdemeanor, unless the court determines that resentencing the person would pose an unreasonable risk of danger to public safety. (§ 1170.18, subd. (b).) Section 1170.18, subdivision (d) provides that a person who is resentenced pursuant to section 1170.18, subdivision (b) “shall be given credit for time served and shall be subject to parole for one year following completion of his or her sentence, unless the court, in its discretion, as part of its resentencing order, releases the person from parole.” (§ 1170.18, subd. (d).)

If the court determines the criteria for relief under section 1170.18, subdivision (f) are satisfied, then “the court shall designate the felony offense or offenses as a misdemeanor.” (§ 1170.18, subd. (g).) The person obtaining relief under section 1170.18, subdivision (f) is not resentenced and is not subject to the one-year parole term of section 1170.18, subdivision (d).

Bell contends the trial court did not have authority to impose parole under section 1170.18, subdivision (d) because he had satisfied the criteria for relief under section 1170.18, subdivision (f). He argues the word “sentence,” as contained in

section 1170.18, subdivisions (a) and (f), refers only to the term of imprisonment itself. Therefore, his argument continues, he completed his sentence because he had completed his term of imprisonment, although he was on some form of supervised release.

In the respondent's brief, the Attorney General argues the word "sentence" in section 1170.18, subdivisions (a) and (f) refers not only to the term of imprisonment but also the corresponding period of parole or postrelease community supervision (PRCS). The Attorney General cites inter alia, *People v. Nuckles* (2013) 56 Cal.4th 601, 609, in which the California Supreme Court held "parole is a mandatory component of any prison sentence."

The resolution of this appeal, therefore, turns on the meaning of the word "sentence" in section 1170.18, subdivisions (a) and (f). We review issues of statutory interpretation de novo (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916), including statutes added to the Penal Code by the passage of a ballot initiative (*People v. Park* (2013) 56 Cal.4th 782, 796). "In interpreting a voter initiative . . . we apply the same principles that govern statutory construction. [Citation.] Thus, "we turn first to the language of the statute, giving the words their ordinary meaning." [Citation.] The statutory language must also be construed in the context of the statute as a whole and the overall statutory scheme [in light of the electorate's intent]." (*People v. Briceno* (2004) 34 Cal.4th 451, 459.)

Examining section 1170.18 as a whole reveals that it uses the word "sentence" differently in section 1170.18, subdivisions (a), (b), and (f) than in section 1170.18, subdivision (d). In section 1170.18, subdivisions (a), (b), and (f), the word "sentence" refers to a pre-Proposition 47 *felony* sentence. Section 1170.18, subdivision (a) applies to a "person currently serving a sentence for a conviction . . . of a *felony* or *felonies*," subdivision (b) provides for the recall of "the petitioner's *felony* sentence," and subdivision (f) applies to a "person who has completed his or her sentence for a conviction . . . of a *felony* or *felonies*." (Italics added.)

In contrast, section 1170.18, subdivision (d) provides that a “resentenced” person “shall be subject to parole for one year following completion of his or her *sentence*” (italics added), thus referring to the new misdemeanor sentence to which the court has resentenced the person, not to the original felony sentence. Consequently, the language of section 1170.18 itself, in its varying use of the term “sentence,” does not answer the question whether the determinate felony “sentence” in section 1170.18, subdivisions (a) and (f) refers to the term of imprisonment alone or also the following period of parole/PRCS.

We consider the use of the word “sentence” in section 1170.18, subdivisions (a) and (f), in the context of the overall statutory scheme governing determinate felony sentences. Section 3000 expressly applies to such sentences, stating, for example, that it applies to sentences “resulting in imprisonment in the state prison pursuant to Section 1168 or 1170.” (§ 3000, subd. (a)(1).) Section 3000, subdivision (a)(1) requires that a determinate felony sentence “shall include” a period of parole supervision or PRCS. Section 1170, subdivision (c) recognizes the expansive scope of the nature of a determinate felony sentence, providing in relevant part: “The court shall state the reasons for its sentence choice [of the low, middle, or upper prison term] on the record at the time of sentencing. The court shall also inform the defendant that *as part of the sentence* after expiration of the term he or she may be on parole for a period as provided in Section 3000.” (Italics added.)

Sections 3000, subdivision (a) and 1170, subdivision (c) show that in the overall statutory scheme governing determinate felony sentences, a determinate felony *sentence* encompasses not only a prison term but also a period of parole supervision or PRCS. Section 3000 was last amended effective September 2014 in a manner that did not affect the above quoted language (Stats. 2014, ch. 442, § 11). As of the time Bell was resentenced, section 1170, subdivision (c) was last amended in 2008 (Stats. 2008,

ch. 179, § 180, p. 843, superseded by Stats. 2008, ch. 416, § 1, p. 3162).¹ Proposition 47 was enacted by the voters on November 4, 2014, and went into effect the next day. (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.)

The California Supreme Court has held: “The enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted. [Citation.] This principle applies to legislation enacted by initiative.” (*People v. Weidert* (1985) 39 Cal.3d 836, 844; see *Horwich v. Superior Court* (1999) 21 Cal.4th 272, 283 [“Generally, the drafters who frame an initiative statute and the voters who enact it may be deemed to be aware of existing law.”].) We therefore presume that the voters who enacted Proposition 47, along with the proposition’s drafters, were aware that the law defines a determinate felony sentence to include a prison term and a period of parole/PRCS, and intended that the felony “sentence” referred to in subdivisions (a) and (f) of section 1170.18, be understood to include a prison term and a period of parole/PRCS.

The record is clear that at the time of his application under section 1170.18, Bell had completed his term of imprisonment imposed for his felony conviction, but had not completed the requisite period of parole supervision or PRCS. He therefore had not yet completed his sentence within the meaning of section 1170.18, subdivision (f). The trial court properly designated his felony conviction a misdemeanor, resentenced him, and imposed a one-year period of parole under section 1170.18, subdivisions (a), (b), and (d).

¹ Effective January 1, 2016, section 1170, subdivision (c) was amended to add to its second sentence: “or 3000.08 or postrelease community supervision for a period as provided in Section 3451.” (Stats. 2015, ch. 378, § 1.)

DISPOSITION

The order is affirmed.

FYBEL, J.

WE CONCUR:

ARONSON, ACTING P. J.

IKOLA, J.